

**Foots Properties, Inc. and General Truck Drivers,
Chauffeurs & Helpers, Local 692, International
Brotherhood of Teamsters, AFL-CIO. Case 21-
CA-29709**

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by the Union on October 28, 1993, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1993, against Foots Properties, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On January 11, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On January 13, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 15, 1993, notified the Respondent that its letter dated December 10, 1993, in which it represented that the Internal Revenue Service had closed down the Respondent and that the corporation no longer has a tax identification number and therefore is no longer a corporation, had been received but that unless an answer were filed by December 21, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation duly authorized to conduct business under the laws of the State of California, has been engaged in the business of crating and

transporting furniture and other freight, and until August 20, 1993, operated a facility located at 475 Manville Street, Rancho Dominguez, California (the facility). During the 12-month period ending August 20, 1993, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight in interstate commerce under arrangements with and as agent for various common carriers, including Mayflower World-wide Moving Service, each of which operates between various States of the United States. Based on these operations, the Respondent functioned as an essential link in the transportation of freight in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All freight drivers, foremen, drivers, packers, craters, warehousemen, and helpers; excluding office clerical employees, professional and technical employees, guards, watchmen, and supervisors as defined in the Act.

Since at least October 1, 1991, and at all times material herein, the Union has been recognized as the exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1991, to September 30, 1994. At all times since about October 1, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On August 20, 1993, the Respondent ceased its operation described above and laid off all the employees in the unit. The effects of the Respondent's cessation of its operation and the layoff of all employees in the unit relates to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collec-

tive-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its facility and lay off all employees in the unit, the laid-off employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its laid-off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility and the layoff of all the unit employees on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees

would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Foots Properties, Inc., Rancho Dominguez, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union regarding the effects on employees of the Respondent's cessation of operations and layoff of all the unit employees. The unit includes the following employees:

All freight drivers, foremen, drivers, packers, craters, warehousemen, and helpers; excluding office clerical employees, professional and technical employees, guards, watchmen, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union regarding the effects on employees of the Respondent's cessation of operations and layoff of all its unit employees, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay the unit employees who were laid off when the Respondent ceased operations in August 1993, their normal wages plus interest for the period and in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the notice attached hereto, marked "Appendix"¹ to General Truck Drivers,

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, AFL-CIO, and to all employees who were employed at the Respondent's Rancho Dominguez, California facility. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain with General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, AFL-CIO regarding the effects on employees of our cessation of operations and layoff of all the unit employees. The unit includes the following employees:

All freight drivers, foremen, drivers, packers, craters, warehousemen, and helpers; excluding office clerical employees, professional and technical employees, guards, watchmen, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union with respect to the effects on our unit employees of our decision to cease operations and lay off all unit employees, and to reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay our unit employees their normal wages from August 1993, with interest.

FOOTS PROPERTIES, INC.